IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 438 of 2007

PUNAM SINGH
V/S
D.J.,PALI & ORS.

Mr. AK RAJVANSHY, for the appellant / petitioner

Mr. VR CHOUDHARY (CAVEATOR), for the respondent

Date of Order : 6.4.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

By this petition, the petitioner seeks to challenge the order Annex.4, whereby the learned District Judge has set aside the election of the petitioner on election petition filed by the private respondent.

The election of the petitioner was challenged on the ground that the election petitioner objected to acceptability of nomination of the present petitioner, on the ground that in view of the provisions of Section 19(g) (g) of the Rajasthan Panchayati Raj Act, the present petitioner is disqualified, but then this objection was not properly considered. It was submitted that even in the declaration annexed with the nomination, it was clearly mentioned that the present petitioner is facing prosecution

for offences under Sections 467, 409, 420 IPC vide case No.1402/94, 1408/94 and 1408/95, still his nomination was not rejected. Thus election is liable to be set aside.

The petition was contested on the ground inter-alia that the election petitioner has not disclosed, as to what is the quantum of punishment prescribed for various offences, and that the copy of the election petition has not been sent to the Chief Executive Officer by UPC, and therefore, the election petition is liable to be dismissed. The Returning Officer submitted a reply also contesting the election petition.

The learned trial Court framed issues and recorded evidence of the parties, and found that in the nomination paper, the attached declaration did contain the fact of the pendency of the cases regarding financial embezzlement before the trial Court, and various order-sheets of the trial Court had been produced, which shows that charges have been framed and since offence under Section 408 is punishable with imprisonment of 7 years, it was found by the learned trial Court that the petitioner was disqualified and his nomination was wrongly accepted.

Assailing the impugned judgment, it was contended firstly that the copy of the election petition was not sent to the Election Officer by postal certificate before filing

of the election petition, and the averment contained in para-9 of the petition is wrong, and obviously the verification is also wrong.

Suffice it to say that the election petition was filed on 2nd of March 2005, and the certificate of posting in this regard is Ex.7 on the record of the trial Court at page C-10/15, and a perusal thereof shows that UPC dated 1.3.2005 certifies to have sent the communication to the District Election Officer. In that view of the matter, this objection cannot be sustained.

It was then contended that the petitioner was not given sufficient opportunity to lead evidence, inasmuch as, the trial Court expected affidavit of the petitioner to be filed, while according to Rule 85, only a memorandum of statement is to be recorded and not the affidavit.

I have considered this submission also, and find from the order-sheets of the learned trial Court that the the election petitioner's evidence was over on 20.5.2006, and the case was fixed for the present petitioner's evidence on 7.7.2006, on which date, time was sought for producing evidence, and the case was adjourned to 1.8.2006. Again on 22.8.2006, and then on 22.8.2006 last opportunity was given, then on 11.9.2006 again opportunity was given on 300 rupees cost, and the case was transferred, and in the

transferee Court also, time was given on 5.10.2006, on 27.10.2006 again the evidence was not there, and it was clearly directed that the present petitioner should keep his evidence personally present. Then again time was given on 8.11.2006, 28.11.2006, and still when the evidence was not produced, on 2.1.2007 the evidence was closed, and arguments were heard, and the election petition was decided on 6.1.2007. Thus, it is clear that the petitioner was rather given more than sufficient number of opportunities. Thus, this contention also has no force.

The present petition thus, has no force, and is dismissed summarily.

(N P GUPTA),J.

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